

U.S. Department of Labor

Office of Inspector General—Office of Audit

**OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION**



**CONSULTATION PROGRAM
DOES NOT ENSURE WORKER SAFETY
WHEN SERIOUS HAZARDS
ARE NOT CORRECTED AS AGREED TO
BY EMPLOYERS**

**Date: September 4, 2007
Report Number: 05-07-001-10-105**

BRIEFLY...

Highlights of Report Number 05-07-001-10-105, *Consultation Program Does Not Ensure Worker Safety When Serious Hazards Are Not Corrected As Agreed To by Employers*, to the Assistant Secretary for Occupational Safety and Health, dated September 2007.

WHY READ THE REPORT

The Office of Inspector General (OIG) conducted a performance audit of the resolution of serious workplace hazards identified by the Occupational Safety and Health Administration's (OSHA's) Consultation Program. Targeted primarily at small businesses, the Consultation Program is a voluntary, free, and confidential service that allows employers to learn about and correct potential hazards at their worksites without the issuance of citations or penalties. OSHA requires that consultation program officials explain to employers who request to participate in the Program that if a serious hazard is not timely corrected, the Consultation Program Manager will immediately refer the situation for enforcement action.

OSHA administers and provides federal funding to States and territories. OSHA staff monitors the program data on a quarterly basis and conduct on-site visits at the States. Consultants, employed by a State or territory, perform the employer consultations.

The success of the Consultation Program is dependent on several key factors: identifying serious hazards, correcting them timely, ensuring interim protection is in place during the correction period, and referring employers for enforcement action if the serious hazards are not eliminated or controlled during the agreed-upon correction period.

WHY OIG CONDUCTED THE AUDIT

The OIG conducted the audit to determine:

- Did consultation program officials ensure interim protection for employees was in place before granting employers' requests for time extensions to correct serious hazards, and
- When serious hazards identified during consultation visits were not corrected timely, were the employers referred to Federal/State OSHA for enforcement action?

Our scope included serious hazards identified during consultation visits in the States of Minnesota, Pennsylvania, and Virginia, and recorded in OSHA's Integrated Management Information System for the period October 1, 2001, through September 30, 2004.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2007/05-07-001-10-105.pdf>

U.S. Department of Labor Office of Inspector General Office of Audit

WHAT OIG FOUND

While we found that the Consultation Program identified and corrected 28,169 serious hazards in the three States we audited, we found two critical components of the program were not working as intended: 1) consultation program officials seldom ensured that interim protection was in place before granting employers' requests for extensions to correct serious hazards, and 2) employers who did not timely complete corrective actions were seldom referred for enforcement action.

In general, OSHA responded that OIG's report is out of context since the majority of serious hazards were corrected timely without extensions or the need for an enforcement referral. OIG recognizes this; however, notwithstanding how many serious hazards were corrected timely, those not corrected timely left workers at risk. OSHA also asserted that failure to ensure interim protection before extensions were granted relates to a lack of proper documentation. Nevertheless, without documentation, OSHA cannot be assured that interim protection was provided.

As a result of OSHA's response, certain revisions were made to the report, including tables, to clarify our findings and recommendations.

WHAT OIG RECOMMENDED

We recommend that OSHA's Assistant Secretary:

1. enforce the requirement that State consultation program officials grant extensions to correct a serious hazard only when there is documented evidence that correction has not been completed because of factors beyond the employer's reasonable control, and the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period;
2. provide guidance to the States on acceptable types of interim protection;
3. establish a performance measure that benchmarks and reports the percentage of serious hazards corrected by the initial correction due date; and
4. enforce the requirement that State consultation program officials immediately refer employers for enforcement action when serious hazards have not been corrected timely.

HOW THE AGENCY RESPONDED

OSHA agreed with all of our recommendations, except Recommendation 3 because it currently has a performance measure that benchmarks the percent of serious hazards verified corrected in a timely manner. As an alternative, OSHA plans rigorous monitoring and creating specific benchmarks for States that may have problems monitoring employer correction of serious hazards. However, OSHA's current performance measure defines "timely" as corrected within 14 days of the latest correction due date, including all extensions. Our recommendation would provide OSHA with data to assist the consultants in establishing more accurate correction due dates. For this reason, we do not accept OSHA's alternative corrective action for Recommendation 3.

Table of Contents

	PAGE
EXECUTIVE SUMMARY	3
ASSISTANT INSPECTOR GENERAL'S REPORT	7
Consultation Program Officials Seldom Ensured that Interim Protection Was In Place Before Granting Extensions to Employers	8
Employers Were Seldom Referred for Enforcement Action When Serious Hazards Were Not Corrected Timely	14
EXHIBITS	19
1. Average Number of Days to Correct Serious Hazards after Identification When No Extensions Were Granted	21
2. Average Number of Days to Correct Serious Hazards after Identification When Extensions Were Granted	22
APPENDICES.....	23
A. Background.....	25
B. Objectives, Scope, Methodology, and Criteria.....	29
C. Acronyms and Abbreviations.....	33
D. Agency Response to Draft Report	35

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Executive Summary

We completed a performance audit of the resolution of serious workplace hazards identified through the Occupational Safety and Health Administration's (OSHA's) Section 21(d) Consultation Program. Targeted primarily at small businesses, the Consultation Program is a voluntary, free, and confidential service that allows employers to learn about and correct potential hazards at their worksites without the issuance of citations or penalties. OSHA requires that consultation program officials explain to employers who request to participate in the Program that if a serious hazard is not timely corrected, the Consultation Program Manager will immediately refer the situation for enforcement action. At the opening conference, the consultant must discuss the employer's obligations and rights, including hazard correction, which the employer must agree to in order for the consultation visit to continue.

Federal OSHA, under cooperative agreements with 48 States, the District of Columbia, and several U.S. territories, administers and provides federal funding for the Consultation Program. Consultants, employed by a State or territory, perform the employer consultations. OSHA staff monitors the program data on a quarterly basis and conducts on-site visits at the States.

The success of the Consultation Program is dependent on several key factors: identifying serious hazards, correcting them timely, ensuring interim protection is in place during the correction period, and referring employers for enforcement action if the serious hazards are not eliminated or controlled during the agreed-upon correction period.

The objectives of our audit were to answer the following questions:

1. Did consultation program officials ensure interim protection for employees was in place before granting employers' requests for time extensions to correct serious hazards?
2. When serious hazards identified during consultation visits were not corrected timely, were the employers referred to Federal/State OSHA for enforcement action?

Our audit scope included serious hazards identified during consultation visits in the States of Minnesota, Pennsylvania, and Virginia, for the period October 1, 2001, through September 30, 2004.

Results

We have considered OSHA's response and made certain revisions to the report, including tables, to clarify our findings and recommendations.

While we found that the Consultation Program identified and corrected 28,169 serious hazards in the three States we audited, we found two critical components of the program were not working as intended: 1) consultation program officials seldom ensured that interim protection was in place before granting employers' requests for extensions to correct serious hazards, and 2) employers who did not timely complete corrective actions were seldom referred for enforcement action.

In general, OSHA responded that OIG's report is out of context since the majority of serious hazards were corrected timely without extensions or the need for an enforcement referral. OIG recognizes this; however, notwithstanding how many serious hazards were corrected timely, those not corrected timely left workers at risk. OSHA further noted that the audit found that for 95 percent of the serious hazards with extensions, there was documentation the employer demonstrated a good faith effort to correct the serious hazard, which is a very strong indicator of the employer's commitment to correct serious hazards. While this is true, it is just one of three conditions that must be met before the consultation manager can grant an extension of time to correct the serious hazard. Evidence that the correction was not completed because of factors beyond the employer's reasonable control was not documented in 30 percent of the serious hazards with extensions. More importantly, interim protection was not documented in 97 percent of the serious hazards with extensions. OSHA also asserted that failure to ensure interim protection before extensions were granted relates to a lack of proper documentation. Nevertheless, without documentation, OSHA cannot be assured that interim protection was provided.

Objective 1 Did Consultation Program Officials Ensure Interim Protection for Employees Was In Place Before Granting Employers' Requests for Time Extensions to Correct Serious Hazards?

Of 399 serious hazards with extensions that we tested, consultation program officials did not ensure the existence of interim protection for 389 serious hazards before granting employers' requests for additional time to correct them, as required by OSHA Training and Education Directive (TED) 3.6. As a result, employees were potentially exposed to serious hazards for lengthy periods, ranging from 84 to 109 days on average in the three States we audited. Further, OSHA considered serious hazards corrected in a timely manner if employers completed corrective actions within 14 days of the latest correction due date agreed to by the consultant. OSHA's implementation of this performance measure is ineffective in evaluating timely corrective action because it is measured based on the latest extension granted instead of the original date corrective action is expected.

Objective 2 When Serious Hazards Identified During Consultation Visits Were Not Corrected Timely, Were the Employers Referred to Federal/State OSHA for Enforcement Action?

We audited three States and in these States alone, we identified 1,215 serious hazards that were not corrected timely. For 1,202 of these, the employers were not referred for enforcement action as required in 29 CFR 1908.6 and TED 3.6. Consultation program officials in two of the three States told us they were reluctant to refer employers for enforcement because they feared it would discourage employers from participating in this voluntary program. As a result, workers continued to work in hazardous conditions that may have subjected them to injuries, illnesses, or fatalities. In addition to the fact that referrals for enforcement action were required, we believe that referring such employers for possible enforcement action creates an additional incentive to correct serious hazards, provides penalties for employers who do not comply with the terms of the Consultation Program, and increases the likelihood that workers will be properly protected from workplace hazards.

Recommendations

We recommend that OSHA's Assistant Secretary:

1. enforce the requirement that State consultation program officials grant extensions to correct a serious hazard only when there is documented evidence that correction has not been completed because of factors beyond the employer's reasonable control, and the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period;
2. provide guidance to the States on acceptable types of interim protection;
3. establish a performance measure that benchmarks and reports the percentage of serious hazards corrected by the initial correction due date; and
4. enforce the requirement that State consultation program officials immediately refer employers for enforcement action when serious hazards have not been corrected timely.

Agency Response

OSHA agreed with Recommendations 1, 2, and 4, but disagreed with OIG's Recommendation 3 because OSHA currently has a performance measure that benchmarks the percent of serious hazards verified corrected in a timely manner. OSHA cited alternative plans for rigorous monitoring and creating specific

benchmarks for States that may have problems monitoring employer correction of serious hazards.

The Agency response is included in its entirety at Appendix D.

OIG Conclusion

We have considered OSHA's response and made certain revisions to the report, including tables, to clarify our findings and recommendations.

We consider Recommendations 1, 2, and 4 resolved. These recommendations will be closed after OSHA's planned corrective action has been implemented and the OIG has received evidence of the implementation.

With regard to Recommendation 3, OSHA's current performance measure benchmarks the percent of serious hazards verified corrected in a timely manner, but defines "timely" as corrected within 14 days of the latest correction due date, including all extensions. Our recommendation would provide OSHA with an additional benchmark that would not only promote timely correction of hazards, but eventually also provide data to assist the consultants in establishing more accurate correction due dates. OSHA's alternative plans for rigorous monitoring and creating specific benchmarks for States that may have problems monitoring employer correction of serious hazards is not sufficient to resolve the recommendation.



Assistant Inspector General's Report

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We completed a performance audit of the resolution of serious workplace hazards identified through OSHA's Consultation Program. Targeted primarily at small businesses, the Consultation Program is a voluntary, free, and confidential service that allows employers to learn about and correct potential hazards at their worksites without the issuance of citations or penalties. OSHA requires that consultation program officials explain to employers who request to participate in the Program that if a serious hazard is not timely corrected, the Consultation Program Manager will immediately refer the situation for enforcement action. At the opening conference, the consultant must discuss the employer's obligations and rights, including hazard correction, which the employer must agree to in order for the consultation visit to continue. Additional background information is contained in Appendix A.

The objectives of our audit were to answer the following questions:

1. Did consultation program officials ensure interim protection for employees was in place before granting employers' requests for time extensions to correct serious hazards?
2. When serious hazards identified during consultation visits were not corrected timely, were the employers referred to Federal/State OSHA for enforcement action?

Our audit scope included serious hazards¹ identified during consultation visits in the States of Minnesota, Pennsylvania, and Virginia, for the period October 1, 2001, through September 30, 2004. To accomplish our objectives, we interviewed Federal and State personnel, analyzed data from OSHA's Integrated Management Information System (IMIS) and reviewed a sample of consultation case files. Our audit objectives, scope, methodology, and criteria are detailed in Appendix B.

¹ A serious hazard is any condition or practice which would be classified as a serious violation of applicable federal or state statutes, regulations or standards, based on criteria contained in the current OSHA field instructions or approved State Plan counterpart, excluding the element of employer knowledge.

The success of the Consultation Program is dependent on several key factors: identifying serious hazards, correcting them timely, ensuring interim protection is in place during the correction period, and referring employers for enforcement action if the serious hazards are not eliminated or controlled during the agreed-upon correction period. While we found that the Consultation Program identified and corrected 28,169 serious hazards in the three States we audited, we found two critical components of the program were not working as intended: 1) consultation program officials seldom ensured that interim protection was in place before granting employers' requests for extensions to correct serious hazards, and 2) employers who did not timely complete corrective actions were seldom referred for enforcement action.

In general, OSHA responded that OIG's report is out of context since the majority of serious hazards were corrected timely without extensions or the need for an enforcement referral. OIG recognizes this; however, notwithstanding how many serious hazards were corrected timely, those not corrected timely left workers at risk. OSHA further noted that the audit found that for 95 percent of the serious hazards with extensions, there was documentation the employer demonstrated a good faith effort to correct the serious hazard, which is a very strong indicator of the employer's commitment to correct serious hazards. While this is true, it is just one of three conditions that must be met before the consultation manager can grant an extension of time to correct the serious hazard. Evidence that the correction was not completed because of factors beyond the employer's reasonable control was not documented in 30 percent of the serious hazards with extensions. More importantly, interim protection was not documented in 97 percent of the serious hazards with extensions. OSHA also asserted that failure to ensure interim protection before extensions were granted relates to a lack of proper documentation. Nevertheless, without documentation, OSHA cannot be assured that interim protection was provided.

Objective 1 – Did Consultation Program Officials Ensure Interim Protection for Employees Was In Place Before Granting Employers' Requests for Time Extensions to Correct Serious Hazards?

Finding – Consultation Program Officials Seldom Ensured that Interim Protection Was In Place Before Granting Extensions to Employers.

Of 399 serious hazards with extensions, consultation program officials did not ensure the existence of interim protection for 389 serious hazards before granting employers' requests for additional time to correct them, as required by OSHA Training and Education Directive (TED) 3.6. As a result, employees in the three States we audited were potentially exposed to serious hazards for lengthy periods, ranging from 84 to 109 days on average. Further, OSHA considered serious hazards corrected in a timely manner if employers completed corrective actions within 14 days of the latest correction due date agreed to by the consultant. OSHA's implementation of this performance measure is ineffective in evaluating timely

corrective action because it is measured based on the latest extension granted instead of the original date corrective action is expected.

Federal regulations at 29 CFR 1908.6(f) (3) allow the consultation manager to grant the employer an extension if the correction has not been completed, providing the employer meets three conditions:

1. demonstrates having made a good faith effort to correct the hazard within the established time frame;
2. shows evidence that correction has not been completed because of factors beyond the employer's reasonable control; and
3. shows evidence that the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period.

TED 3.6, Chapter 6 (formerly Chapter 5), Part III.C states:

... Any extensions to the correction due date (oral or written) must be documented. The documentation must include an explanation of why correction was not completed in the established time frame and evidence that the employer is safeguarding employees against the hazard with interim protection during the correction period must be documented (underlining added for emphasis).

Despite the regulations and TED 3.6 requirements, our audit testing showed that, with few exceptions, there was no documentation that interim protection was in place before granting an extension. As summarized in the table on the following page, for 18 out of 399 serious hazards with extensions, or 5 percent, the employers did not demonstrate a good faith effort to correct the serious hazard [Condition 1]. For 118 out of 399 serious hazards with extensions, or 30 percent, the employers did not show evidence that the correction was not completed because of factors beyond the employer's reasonable control [Condition 2]. For 389 out of 399 serious hazards with extensions, or 97 percent, the employers did not have the required documentation of interim protection [Condition 3].

Serious Hazards with Extensions

	Number of Serious Hazards with Extensions	Condition 1 - No Demonstrated Good Faith Effort to Correct the Serious Hazard	Condition 2 - No Evidence That Correction Was Not Completed Because of Factors Beyond Employer's Control	Condition 3 - Interim Protection Not Documented
Minnesota				
FY 2002	16	0	5	15
FY 2003	7	2	5	7
FY 2004	8	0	3	8
Total	31	2	13	30
Pennsylvania				
FY 2002	108	0	21	104
FY 2003	77	0	28	77
FY 2004	50	0	14	50
Total	235	0	63	231
Virginia				
FY 2002	93	11	32	90
FY 2003	23	5	5	22
FY 2004	17	0	5	16
Total	133	16	42	128
Grand Total	399	18	118	389

The following examples, from the 389 case files we reviewed, illustrate the potential impact of employers being granted extensions to serious hazards without interim protection documented:

- An employer was notified of a serious hazard involving the requirement that electrical wiring and spraying equipment be explosion proof [29 CFR 1910.107 (c) (6)]. The elapsed time between the consultation visit and the original correction due date was 64 days. The employer was granted two time extensions without evidence of interim protection in place. An additional 228 days elapsed from the original correction due date until the date the hazard was corrected. As a result, 10 workers were potentially exposed to this serious hazard for 292 days.
- An employer was notified of a serious hazard involving the requirement for live parts of electrical equipment to be guarded against accidental contact [29 CFR 1910.303(g) (2) (i)]. The elapsed time between the consultation visit and the original correction due date was 44 days. The employer was granted three time extensions to correct this hazard, even though evidence of interim protection was not in place. An additional 92 days elapsed between the original correction due date and the date the hazard

was corrected. As a result, 25 workers were potentially exposed to this serious hazard for 136 days.

- Another employer was notified of a serious hazard pertaining to the requirement that a circular crosscut table saw be guarded by a hood [29 CFR 1910.213(d) (1)]. The elapsed time between the consultation visit and the original correction due date was 78 days. The employer was granted two extensions to correct this hazard without evidence of interim protection. An additional 104 days elapsed between the original correction due date and the date the hazard was corrected. As a result, 14 workers were potentially exposed to this serious hazard for 182 days.

We interviewed the top program managers in the three States we audited to determine why interim protection was not documented, and two of the three stated there is not a clear and consistent understanding of the requirement:

- A Consultation Program Director responded that interim protection is an area that is not being consistently followed because it is not clear-cut. He gave the example that if the employer's written safety and health programs are not available to employees, or not even prepared, it is hard to identify what interim protection the employer should, or can, provide.
- Another Consultation Program Manager responded that he was not aware of the written requirements for interim protection in effect during our audit period. He said he felt assured that interim protection was being provided as evidenced by the fact that employers had not reported injuries. He also stated that interim protection is not always practical for employers to provide and that OSHA should clarify what interim protection is needed.

Nonetheless, Federal regulations and OSHA guidance clearly require that interim protection be in place throughout the serious hazard correction period, not just when an extension is requested, as was discussed above. Further, 29 CFR 1908.5 (a) (3) requires that the State inform the employer of its responsibilities before accepting the request for a consultation visit:

...The state shall explain that while utilizing this service, an employer remains under a statutory obligation to provide safe and healthful work and working conditions for employees. In addition, while the identification of hazards by a consultant will not mandate the issuance of citations or penalties, the employer is required to ... take action to correct within a reasonable time any serious hazards that are identified.

TED 3.6, Chapter 7 (formerly Chapter 6), Part I.B.2 provides that serious hazards have to be corrected, or that the consultant recommends interim protection measures, before the consultant leaves the site:

Where it is impossible to correct a serious hazard before the consultant leaves the employer's site, the consultant must recommend interim protection measures to the employer.

With OSHA's current procedures, interim protection is not required to be documented until an extension is requested. Therefore, unless the employer requested an extension, it is not known whether interim protection (the consultant's recommendation or an employer's alternative) was provided prior to correcting the serious hazard. We calculated the average correction period to demonstrate that employees were potentially exposed to serious hazards for lengthy periods after hazard identification. As shown in Exhibit 1 (page 19), time to correct serious hazards without extensions ranged from 28 to 43 days on average in the three States we audited. However, as shown in Exhibit 2 (page 20), serious hazards with extensions took significantly longer to correct, ranging from 84 to 109 days on average for the three States. In addition, in one State, three serious hazards identified each took over 300 days to correct, including extensions, after the serious hazards were identified. These three hazards were in the manufacturing industry and involved exposure to machines without a safety guard.

OSHA considered serious hazards corrected in a timely manner if employers completed corrective actions within 14 days of the latest correction due date agreed to by the consultant. This performance measure was reported quarterly by OSHA on the Mandated Activities Report for Consultation (MARC). In Fiscal Year (FY) 2004, OSHA set a goal for State consultation programs to assure that 85 percent of the serious hazards identified during consultation visits be corrected in a timely manner. OSHA's implementation of this performance measure is ineffective in evaluating timely corrective action because it is measured based on the latest extension granted instead of the original date corrective action is expected. OSHA should consider tracking the serious hazards corrected by the initial correction due date.

Recommendations

We recommend that the Assistant Secretary for Occupational Safety and Health:

1. enforce the requirement that State consultation program officials grant extensions to correct a serious hazard only when there is documented evidence that correction has not been completed because of factors beyond the employer's reasonable control, and the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period;

2. provide guidance to the States on acceptable types of interim protection; and
3. establish a performance measure that benchmarks and reports the percentage of serious hazards corrected by the initial correction due date.

Agency Response

OSHA agrees with the intent of Recommendation 1 and has taken a number of steps to ensure that consultants grant extensions in accordance with program requirements and assure that interim protection is in place to safeguard employees until abatement of the hazard is accomplished. OSHA's new information management system, OSHA Information System (OIS), will not allow consultants to grant extensions without attesting that proper interim protection is in place. Next, the Fiscal Year 2008 cooperative agreements with the States require, as a condition for granting funds, that the programs ensure that employers granted extensions for correction of serious hazards demonstrate good faith, show evidence of steps taken to correct serious hazards, and provide interim protection during the extended correction period. Additionally, OSHA intends to issue a memorandum to all Regional Administrators reinforcing the need for proper documentation and monitoring programs for the correction of serious hazards and interim protection. Consultation Program Managers will be issued a similar memorandum, reiterating the importance of following proper procedures for documentation when granting extensions. Finally, training was provided to all Consultation Program Managers at the recent training conference to ensure that established policies and procedures for the correction of serious hazards are properly understood and adhered to.

OSHA agrees with Recommendation 2 that States must be aware of the acceptable types of interim protection and therefore revised TED 3.6 in December 2006, subsequent to audit fieldwork, to broadly outline options for interim protection. Other resources are also available on OSHA's website to assist consultants in recommending interim protection. The Agency also provides technical assistance through Regional Engineers and Hygienists, the Salt Lake Technical Center, the Cincinnati Laboratory, and the Wisconsin Occupational Health Laboratory. OSHA will continue to inform programs of these resources and will issue annual reminders on the availability of guidance materials for the selection of interim protection.

OSHA disagrees with Recommendation 3. OSHA believes it is not feasible to predict the length of time required to abate every type of workplace hazard. The time required to abate a hazard can vary depending on many factors. Establishing a performance measure that benchmarks the percentage of serious hazards corrected by the initial correction due date would not change the conditions that require a consultant to revise the correction time period. OSHA is concerned that establishing a new benchmark tied to the initial correction due date could have the opposite effect of that intended as it might encourage some programs to grant longer initial correction due dates in an effort to meet the established benchmark.

OSHA does agree that measuring performance and benchmarking the correction of serious hazards is an important element in tracking the effectiveness of the On-site Consultation Program and has a performance measure that benchmarks the percent of serious hazards verified corrected in a timely manner. The standard for this benchmark is 100 percent. An element of this benchmark is a measure that tracks the correction of serious hazards based on the initial correction due date. OSHA does not believe that establishing a performance standard for this measure will be valuable in defining overall program performance. However, the Agency believes that rigorous monitoring of the timely correction of serious hazards is the most prudent action. The OIS currently being designed will allow OSHA to create specific benchmarks for particular States that may have problems monitoring the correction of serious hazards.

OIG Conclusion

We consider Recommendations 1, 2, and 4 resolved. These recommendations will be closed after OSHA's planned corrective action has been implemented and the OIG has received evidence of the implementation.

With regard to Recommendation 3, OSHA's current performance measure benchmarks the percent of serious hazards verified corrected in a timely manner, but defines "timely" as corrected within 14 days of the latest correction due date, including all extensions. Our recommendation would provide OSHA with an additional benchmark that would not only promote timely correction of hazards, but eventually also provide data to assist the consultants in establishing more accurate correction due dates. OSHA's alternative plans for rigorous monitoring and creating specific benchmarks for States that may have problems monitoring employer correction of serious hazards is not sufficient to resolve the recommendation.

Objective 2 – When Serious Hazards Identified During Consultation Visits Were Not Corrected Timely, Were the Employers Referred to Federal/State OSHA for Enforcement Action?

Finding – Employers Were Seldom Referred for Enforcement Action When Serious Hazards Were Not Corrected Timely.

We audited three States and in these States alone, we identified 1,215 serious hazards that were not corrected timely. For 1,202 of these, the employers were not referred for enforcement action, as required in 29 CFR 1908.6 and TED 3.6. Consultation program officials in two of the three States told us they were reluctant to refer employers for enforcement because they feared it would discourage employers from participating in this voluntary program. As a result, workers continued to work in hazardous conditions that may have subjected them to injuries, illnesses, or fatalities. In addition to the fact that referrals for enforcement action were required, we believe that referring such employers for possible enforcement

action creates an additional incentive to correct serious hazards, provides penalties for employers who do not comply with the terms of the Consultation Program, and increases the likelihood that workers will be properly protected from workplace hazards.

Federal regulations at 29 CFR 1908.6 (f) (4) require:

If the employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions thereof, the consultation manager shall immediately notify the appropriate OSHA enforcement authority and provide the relevant information. The OSHA enforcement authority will make a determination, based on a review of the facts, whether enforcement activity is warranted.

TED 3.6, Chapter 7, Part III also requires referral to the OSHA enforcement authority:

... Where the Consultation Project Manager determines that a serious hazard persists at a site that has received a consultation service, the Consultation Project Manager must make a referral to OSHA. Any of the following conditions is grounds for referral to OSHA:

... B. A serious hazard that is not corrected within the established time frame, including extensions.

The consultation program directors in the three States we visited did not follow the regulations or OSHA guidance requiring that they immediately refer employers for enforcement action when the serious hazards were not timely corrected. In our audit analysis of 5,217 consultation visits reported in the IMIS database for the three States, we found 1,215 serious hazards that were not timely corrected. Of these, only 13 were referred for enforcement action, as required. We identified 1,202 serious hazards where the employers did not timely correct the hazards but were not referred for possible enforcement action, as summarized on the next page:

**Of Serious Hazards Not Timely Corrected,
Most Were Not Referred for Enforcement**

	Serious Hazards Not Timely Corrected	Serious Hazards Not Timely Corrected and Referred	Serious Hazards Not Timely Corrected and Not Referred
Minnesota:			
FY 2002	89	0	89
FY 2003	51	0	51
FY 2004	21	0	21
Pennsylvania:			
FY 2002	141	0	141
FY 2003	77	0	77
FY 2004	37	0	37
Virginia:			
FY 2002	330	0	330
FY 2003	160	3	157
FY 2004	309	10	299
Totals	1,215	13	1,202

State consultation program officials in two of the three States told us they were reluctant to refer employers for enforcement because they were concerned that it would discourage other employers from volunteering to participate in the program. One program official said that when employers have a positive experience with a consultant, they may tell a few other employers. However, if employers have a bad experience with a consultant, they will tell many other employers. Another program official said that employers that are eligible for the program may not volunteer for a consultation visit for fear of referral for enforcement action. This, in turn, may reduce the number of consultation requests the State receives.

Subsequent to our audit fieldwork, Minnesota added the following to its written procedures in Minnesota Workplace Safety Consultation (WSC) ADM 3.1, Section E, dated February 1, 2006:

Referrals will only be made when it is evident that an employer is no longer cooperating with the WSC Director and is no longer willing to fulfill their obligation to correct the serious hazards noted during the onsite visit.

This provision is contrary to 29 CFR 1908.6 (f) (4) because it does not require immediate referrals to the enforcement agency if an employer fails to correct a serious hazard within the established time frame, including extensions.

Workers will continue to be exposed to hazardous working conditions that may result in workplace injuries, illnesses, or fatalities when employers who fail to complete corrective actions in a timely manner are not immediately referred to OSHA for enforcement action.

Recommendation

4. We recommend that OSHA's Assistant Secretary enforce the requirement that State consultation program officials immediately refer employers for enforcement action when serious hazards have not been corrected timely.

Agency Response

OSHA agrees with Recommendation 4 and that the protection of employees from serious workplace hazards is a critically important matter and any disregard for this notion must be handled appropriately, including referral for enforcement action. OSHA has taken some actions and will implement some additional measures to ensure that consultation program officials continue to refer employers for enforcement action when serious hazards are not corrected in a timely manner. OSHA revised TED 3.6 in December 2006 which clearly outlines the requirements for referral to enforcement for all programs. Additionally, training was provided to all Consultation Program Managers and Regional Consultation Officers at the recent training conference to ensure established program policies and procedures are properly understood and adhered to by the programs. Next, the Fiscal Year 2008 cooperative agreements with the State programs contain language that the programs will "ensure that the appropriate OSHA enforcement authority is notified if an employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions granted." This requirement will be monitored by the Regional Offices and reported in the Regional Annual Consultation Evaluation Report for each program within their jurisdiction. Finally, OSHA intends to issue a memorandum to all Regional Administrators reinforcing the need for proper monitoring of programs in their jurisdiction for the correction of serious hazards and enforcement referrals for failure to correct hazards in a timely manner. Consultation Program Managers will be issued a similar memorandum, reiterating the importance of following proper procedures for the correction of serious hazards.

OIG Conclusion

We consider Recommendation 4 resolved. This recommendation will be closed after OSHA's planned corrective action has been implemented and the OIG has received evidence of the implementation.



Elliot P. Lewis
April 26, 2007

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Exhibits

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EXHIBIT 1

**Average Number of Days
to Correct Serious Hazards
after Identification
When No Extensions Were Granted**

	Serious Hazards Tested	Number of Serious Hazards Without Extensions	Average Number of Days to Correct²
Minnesota			
FY 2002	234	206	31
FY 2003	332	292	28
FY 2004	228	196	25
Average			28
Pennsylvania			
FY 2002	315	197	52
FY 2003	292	155	41
FY 2004	327	209	37
Average			43
Virginia			
FY 2002	476	386	44
FY 2003	260	237	28
FY 2004	257	235	38
Average			38

² We could not attest to the accuracy of the calculation because of errors identified and missing data.

**Average Number of Days
to Correct Serious Hazards
after Identification
When Extensions Were Granted**

	Serious Hazards Tested	Number of Serious Hazards With Extensions	Average Number of Days to Correct³
Minnesota			
FY 2002	234	15	63
FY 2003	332	5	102
FY 2004	228	13	102
Average			84
Pennsylvania			
FY 2002	315	115	121
FY 2003	292	132	115
FY 2004	327	115	92
Average			109
Virginia			
FY 2002	476	89	122
FY 2003	260	22	69
FY 2004	257	17	76
Average			107

³ We could not attest to the accuracy of the calculation because of errors identified and missing data.

Appendices

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APPENDIX A

BACKGROUND

The Consultation Program is provided for in the Occupational Safety and Health Act of 1970, Section 21(d), which was added in 1998. It is a proactive program designed to assist employers in identifying and correcting workplace hazards without the penalties associated with a normal enforcement inspection.

The Consultation Program is a voluntary program available to small employers with fewer than 250 employees at a fixed site and no more than 500 corporation-wide. Priority in scheduling visits is given to employers in high hazard industries, such as construction and manufacturing. The onsite consultation is provided only at the request of the employer.

OSHA, under cooperative agreements with 48 States, the District of Columbia, and several U.S. territories, administers and provides federal funding for the On-site Consultation Program. Currently, there are 29 States, the District of Columbia, and 3 territories that operate On-site Consultation programs under Federal OSHA jurisdiction and follow OSHA standards. This includes 3 States and 1 territory whose State plans cover only public sector employment and also provide private sector On-site Consultation services under section 21(d) of the Occupational Safety and Health (OSH) Act. In addition, 19 State-plan States operate On-site consultation programs under State jurisdiction and follow State standards, which are at least as restrictive as Federal OSHA standards. Consultants, employed by a State or territory, perform the employer consultations. OSHA staff monitors the program data on a quarterly basis and conduct on-site visits at the States.

OSHA provides 90 percent of the funding to States that administer consultation programs, and the States are required to provide the remaining 10 percent. The Federal Fiscal Year 2004 budget for this activity was \$52.2 million. Minnesota received \$933,390; Pennsylvania received \$1,618,000; and Virginia received \$966,000.

OSHA requires that consultation program officials explain to employers who request to participate in the Program that if a serious hazard is not timely corrected, the Consultation Program Manager will immediately refer the situation for enforcement action. At the opening conference, the consultant must discuss the employer's obligations and rights, including hazard correction, which the employer must agree to in order for the consultation visit to continue.

During the consultation, employers learn about potential hazards at their worksite without triggering an enforcement inspection. The employer is required to take immediate action necessary to eliminate hazards that represent imminent dangers to employees. When serious hazards are identified, the consultant advises the employer of appropriate corrective methods, assists the employer in developing an

action plan, and establishes reasonable correction due dates with the employer. A List of Hazards is submitted to the employer which is required to post the list as a means of informing employees about hazards in the workplace. Where it is impossible to correct a serious hazard before the consultant leaves the site, the consultant must recommend interim protection measures to the employer. Further, the consultant must indicate in the case file notes whether interim protection is required, the nature of the recommended interim protection, and the date the interim protection must be in place.

A written report is provided to the employer at the conclusion of the visit. The report lists the hazards and unsafe working conditions identified during the consultation visit, the corrective actions required of the employer, and mutually agreed upon correction dates for all serious hazards.

The State's Consultation Manager can agree to extend the initial deadline if the employer demonstrates a good faith effort at correction. Any extensions to the correction due date (oral or written) must be documented. The documentation must include an explanation of why the correction was not completed in the established time frame, and evidence that the employer is safeguarding employees against the hazard with interim protection during the correction period must be documented.

Benefits to employers that participate in the Consultation Program are that no citations are issued or penalties proposed for hazards identified by the consultant. In addition, the employer will not face a programmed inspection for at least one year. The consultation is confidential; employer names and any information provided about the workplace, plus any unsafe or unhealthful working conditions that the consultant uncovers, will not routinely be reported to the OSHA inspection staff. However, if an employer fails to immediately correct or remove employees from imminent danger situations, or eliminate serious hazards according to the corrective action plan and within the agreed-upon time frames, the situation must be immediately referred to the appropriate State or Federal authorities for enforcement action.

OSHA measures the Consultation Program's progress through the Mandated Activities Report for Consultation (MARC). The MARC is the summary and analysis of the consultation activities from all States compiled and reported on a quarterly basis by the OSHA consultation officials in the National Office. The Regional Consultation Program Officer and the Consultation Program Manager review the consultation program data on the MARC to identify performance that does not meet the following measures:

- percent of serious hazards verified corrected in a timely manner;
- percent of serious hazards not verified corrected in a timely manner;
- percent of serious hazards referred to enforcement; and
- number of uncorrected serious hazards with the correction due date greater than 90 days past due (104 days in total).

OSHA Training and Education Directive (TED) 3.6 – Consultation Policies and Procedures Manual (CPPM) – outlines the policies and procedures applicable to the Consultation Program. TED 3.6 was issued in August 2001 to replace TED 3.5B and TED 3.5C; it was revised in 2004, and again in December 2006.

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APPENDIX B

OBJECTIVES, SCOPE, METHODOLOGY, AND CRITERIA

Objectives

The objectives of our performance audit were to answer the following questions:

1. Did consultation program officials ensure interim protection for employees was in place before granting employers' requests for time extensions to correct serious hazards?
2. When serious hazards identified during consultation visits were not corrected timely, were the employers referred to Federal/State OSHA for enforcement action?

Scope

Our audit period covered serious hazards identified during onsite consultation visits initiated between October 1, 2001, and September 30, 2004 (Fiscal Years 2002 through 2004). The audit scope was limited to the consultation programs in three States: Minnesota, Pennsylvania, and Virginia. We selected these States giving consideration to include State plan States (Minnesota and Virginia) and States operated by OSHA (Pennsylvania), as well as States with a high number of serious hazards identified (Minnesota and Pennsylvania), and States with (Virginia) and without (Minnesota and Pennsylvania) referrals for enforcement action.

Methodology

To achieve our objectives, we interviewed OSHA National Office officials to obtain general information about the consultation program environment. We also provided them with the required fields for a download of the IMIS database of "initial" (first, not follow-up) onsite consultation visits initiated between October 1, 2001, and September 30, 2004, in Minnesota, Pennsylvania, and Virginia.

Using the IMIS database provided, we conducted certain audit steps on the audit universe for each of the three States in our audit scope. We also performed other audit steps on a sample of case files statistically selected based on guidance provided by the OIG Statistician. We randomly selected the case files for review so that each case file would have an equal chance to be selected. The sample size was determined using a 95 percent confidence level and ± 7 percent sampling precision. The results are shown in the following chart:

Audit Universe and Sample

	Universe		Sample	
	Consultation Visits	Serious Hazards	Consultation Visits ⁴	Serious Hazards ⁵
Minnesota:				
FY 2002	812	3,641	52	234
FY 2003	780	4,065	50	332
FY 2004	650	3,335	41	228
Total	2,242	11,041	143	794
Pennsylvania:				
FY 2002	556	3,395	55	315
FY 2003	471	2,740	46	292
FY 2004	532	3,123	51	327
Total	1,559	9,258	152	934
Virginia:				
FY 2002	541	3,525	59	476
FY 2003	430	2,905	48	260
FY 2004	445	2,655	44	257
Total	1,416	9,085	151	993
Totals	5,217	29,384	446	2,721

Our methodology included the following audit analyses of 5,217 onsite consultation visits in the database for the three States:

- visits with serious hazards not corrected within 14 days after the latest correction due date (OSHA standard);
- visits with serious hazards where the employers did not timely correct the serious hazards and the employer was in a high hazard industry;
- visits with serious hazards that were not corrected timely and were referred for enforcement action;
- visits with serious hazards that were not timely corrected and were not referred for enforcement action;
- visits with serious hazards not corrected within 14 days after the initial agreed-upon correction due date; and
- average number of days to correct a serious hazard uncorrected more than 14 days after the initial agreed-upon correction due date (from opening conference date).

Our methodology also included the following audit analyses of 446 case files in our statistical sample:

4 These numbers include 10 case files that the states could not locate. However, the unlocated files were immaterial to the sample taken as a whole.

5 The number of serious hazards was determined from hard copy Hazard Form 40s in 436 case files.

- IMIS data completeness and accuracy;
- visits with serious hazards granted an extension;
- number of extensions granted for serious hazards;
- for serious hazards granted an extension, employers demonstrated good faith effort to correct, evidence that correction not completed because of factors beyond the employer's control, and interim protection documented;
- visits with serious hazards not corrected within 14 days after the latest correction due date (OSHA standard); and
- average number of days from consultation visit opening conference until serious hazard was corrected.

As part of our fieldwork, we interviewed the officials responsible for the State consultation programs to determine management controls over relevant activities. Our management controls work included obtaining and reviewing the States' consultation policies and procedures for: 1) establishing corrective action due dates for hazards identified, 2) granting extensions, and 3) referring employers to OSHA for enforcement action. We also reviewed OSHA performance reports, particularly the quarterly MARC. Our testing of management controls focused only on the controls related to our audit objectives and was not intended to form an opinion on the adequacy of overall management controls, and we do not render such an opinion.

During audit attribute testing for data accuracy, we reviewed the consultation case files, including Consultation Visit (Form 30) and Hazards Report (Form 40). Our testing determined the State's compliance with 29 CFR 1908 and OSHA Directive TED 3.6. This testing was not intended to form an opinion on compliance with laws and regulations as a whole, and we do not render such an opinion.

We conducted our performance audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States, and we performed such tests as we considered necessary to satisfy our audit objectives.

Our audit was conducted onsite at the OSHA National Office; the Chicago Regional OSHA Office; and the State consultation program offices. We visited the State Offices in St. Paul, Minnesota; Indiana, Pennsylvania; and Richmond, Virginia. Via teleconference, we also interviewed consultation program officials in the Philadelphia Regional OSHA Office. Our fieldwork began July 25, 2005, and ended April 26, 2007.

Criteria

We used the following criteria to perform this audit:

- OSH Act of 1970, Section 21 (d)
- 29 CFR 1908 – Consultation Agreements
- OSHA Directive TED 3.6, as amended through December 2006 –
Consultation Policies and Procedures Manual (CPPM)

APPENDIX C

ACRONYMS AND ABBREVIATIONS

ADM	Administrative Directive Manual
CFR	Code of Federal Regulations
CPPM	Consultation Policies and Procedures Manual
FY	Fiscal Year
IMIS	Integrated Management Information System
MARC	Mandated Activities Report for Consultation
OIS	OSHA Information System
OSHA	Occupational Safety and Health Administration
TED	Training and Education Directive
WSC	Workplace Safety Consultation

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APPENDIX D

AGENCY RESPONSE TO DRAFT REPORT

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20340

JUN 15 2007

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

FROM: EDWIN G. FOULKE, JR. *Edwin G. Foulke, Jr.*

SUBJECT: Response to OIG's Draft Audit Report
No. 05-07-001-10-105
"Workers Were at Risk During the
Resolution of Serious Hazards"

This memorandum is in response to your May 3, 2007, transmittal of the Office of Inspector General (OIG) Draft Audit Report No. 05-07-001-10-105, "Workers Were at Risk During the Resolution of Serious Hazards." We appreciate this opportunity to respond to the findings and recommendations of the OIG and to clarify some of the findings contained in the draft audit report regarding the OSHA On-site Consultation Program we believe to be somewhat misleading.

The OIG Draft Audit Report contends that Consultants often failed to ensure interim protection before granting extensions to correct serious hazards. We believe this perceived deficiency relates to a lack of proper documentation and monitoring of required written procedures rather than a more serious implication that the On-Site Consultation Program leaves workers exposed to serious risk. Three criteria must be met under 29 CFR 1908.6(f)(3) prior to an employer receiving an extension for hazard correction. The OIG study showed that two of the three criteria were consistently met and documentation for these criteria were in place supporting extensions for hazard correction. In fact, the criteria for "good faith" effort to correct hazards in the established time frame by the employer were documented in 95 percent of extensions granted. These criteria for "good faith" are a very strong indicator of the employer's commitment to correct hazards and protect the safety and health of their employees. Consultants carefully evaluate and assess this and other aspects of the employer's safety and health program prior to granting an extension.

We believe interim protection is carefully considered but not always properly documented by all of the On-site Consultation Projects. Consultants recommend interim protection for all serious hazards during the initial workplace assessment. However, current Agency procedures do not require documentation of interim

protection unless an extension is requested. Therefore, interim protection actually may be in place as recommended by the Consultant during the hazard correction period. Also, at a minimum, there is interim protection through the administrative control of informing and educating employees of serious hazards which is routinely provided by the Consultant as an element of the worksite assessment. Most importantly, I believe it is more revealing that the OIG Draft Audit Report found that over 85 percent of Consultant-employer interaction regularly achieved correction of serious hazards without any need for an extension of time.

The OIG study also reported that Consultants seldom refer employers for enforcement action when serious hazards are not corrected in a timely manner. The Agency agrees that not a single employee should be placed at risk and appropriate action including enforcement referral should be taken when necessary. However, the gravity of the concern expressed in the Draft Audit Report is presented out of context given that 96 percent of all serious hazards evaluated as part of the study were corrected in a timely manner without the need for an enforcement referral.

The foundation for the delivery of the On-site Consultation service is the assurance received from employers that serious hazards identified by the Consultant will be corrected in a timely manner. The Agency takes a very strong position on the issue of employee protection and will take every necessary action to respond to the findings of this report that will strengthen the On-Site Consultation Program. Our responses to the specific recommendations in the OIG Draft Audit are as follows:

Recommendation 1: *Enforce the requirement that State consultation program officials grant extensions to correct a serious hazard only when there is documented evidence that correction has not been completed because of factors beyond the employer's reasonable control, and the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period.*

OSHA agrees with the intent of this recommendation. In fact, the Agency has taken a number of steps to ensure that Consultants grant extensions in accordance with program requirements and assure that interim protection is in place to safeguard employees until the complete abatement of the hazard is accomplished.

First, OSHA is in the process of developing and implementing its new information management system, known as the OSHA Information System (OIS). OIS will enable better management of the On-site Consultation Program data including the process for tracking the correction of hazards and granting extensions. OIS system requirements will not allow Consultants to grant extensions without the assurance that proper interim protection is in place. This will be a "fail-safe" feature that will strengthen the On-site Consultation Program's ability to protect the safety and health of employees.

Next, changes to the Fiscal Year 2008 Federal Consultation Cooperative Agreement require that On-site Consultation Projects must ensure that employers granted extensions for correction of serious hazards demonstrate good faith, show evidence of steps taken to correct hazards, and provide interim protection during the extended correction period. This change is significant, as it is a condition for granting funds to On-site Consultation Projects. OSHA Regional Offices will monitor this requirement and provide a report in the Regional Annual Consultation Evaluation Report (RACER) for each Consultation Project within their jurisdiction.

Additionally, we intend to issue a memorandum to all OSHA Regional Administrators reinforcing the need for proper documentation and monitoring of On-site Consultation Projects in their States for the correction of serious hazards and interim protection. The OSHA Consultation Project Managers will be issued a similar memorandum, reiterating the importance of following the proper procedures for documentation when granting extensions for the correction of serious hazards.

Finally, at the recent 2007 Annual Consultation Training Conference, training was conducted for all Consultation Program Managers and Regional Consultation Officers to ensure that established policies and procedures for the correction of serious hazards are properly understood and adhered to by On-Site Consultation Projects.

Recommendation 2: *Provide guidance to the States on acceptable types of interim protection.*

OSHA agrees that States must be aware of the acceptable types of interim protection but believes that the Agency already provides such guidance to the States on this matter. Guidance is currently outlined in OSHA Training and Education Directive (TED) 3.6 Consultation Policies and Procedure Manual (CPPM), Chapter 7 for States to choose acceptable interim protection. This chapter, revised in December 2006, broadly outlines options for interim protection based on the "hierarchy of controls" for preventing exposure to hazards in the workplace. In addition, information and guidance resources are readily available on OSHA's website to assist Consultants in making recommendations on interim protection. The Agency also provides technical assistance through Regional Engineers and Hygienists, as well as the Salt Lake Technical Center, the Cincinnati Laboratory and the Wisconsin Occupational Health Laboratory. OSHA will continue its efforts to ensure that Consultation projects are aware of these sources of information and guidance. In addition, the Agency will issue annual reminders to On-site Consultation Projects on the availability of guidance materials for the selection of interim protection.

Recommendation 3: *Establish a performance measure that benchmarks and reports the percentage of serious hazards corrected by the initial correction due date.*

OSHA does not agree with this recommendation since we do not believe it is feasible to predict the length of time required to abate every type of workplace hazard. The time-period required to abate a hazard can vary depending on many factors and is established based on prevailing conditions and best judgment at the time the hazard is identified and classified. If those conditions change, the Consultant makes the judgment to grant extensions if all criteria for extensions are satisfied. Establishing a performance measure that benchmarks the percentage of serious hazards corrected by the initial correction due date would not change the conditions that require a Consultant to revise the correction time-period. In fact, we are concerned that establishing a new benchmark tied to the initial correction due date could have the opposite effect of that intended by this recommendation as it might encourage some On-site Consultation Projects to grant longer initial correction due dates in an effort to meet the established benchmark.

The Agency does agree, however, that measuring performance and benchmarking the correction of serious hazards is an important element in tracking the effectiveness of the On-site Consultation Program. OSHA has a performance measure in place that benchmarks the percent of serious hazards verified corrected in a timely manner. The standard for this benchmark is 100 percent. These measures are tracked quarterly in the Mandated Activities Report for Consultation (MARC). The MARC (Section 4A) has four parts related to hazard verification and tracks the number of serious hazards verified corrected by:

- On-sites performed,
- Within original time frame
- Within extension time frame
- Within 14 days of latest correction due date.

The measure of "Within Original Time Frame," tracks correction of serious hazards based on the initial correction due date for serious hazards. However, OSHA does not believe that establishing a performance standard for this measure will be valuable in defining overall program performance. The Agency believes that rigorous monitoring of the timely correction of hazards is the most prudent action. Further, the OIS currently being designed is configured to allow OSHA to create specific benchmarks for particular States that may have problems monitoring the correction of serious hazards.

Recommendation 4: *Enforce the requirement that State Consultation Program officials refer employers for enforcement action when serious hazards were not corrected timely.*

OSHA agrees that the protection of employees from serious workplace hazards is a critically important matter. Any disregard for this notion must be handled appropriately including referral for enforcement action. The OSHA On-site Consultation Program has rigorous requirements for the correction of hazards and ensures participating employers understand the repercussions for non-compliance. The Agency has taken some actions and will implement some additional measures to ensure that On-site Consultation Project officials continue to refer employers for enforcement action when serious hazards are not corrected in a timely manner.

First, OSHA's revision to the TED 3.6, CPPM Chapter 7, Relationship to Enforcement issued December 14, 2006, clearly outlines the requirements for referral to enforcement for all On-site Consultation Projects. Additionally, at the 2007 Annual Consultation Training Conference, training was conducted for all Consultation Program Managers and Regional Consultation Officers to ensure established program policies and procedures for the correction of serious hazards are properly understood and adhered to by the Consultation Projects.

In addition, significant changes to the Fiscal Year 2008 Federal Consultation Cooperative Agreement contains language that State On-site Consultation Projects will "ensure that the appropriate OSHA enforcement authority is notified if an employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions granted." This requirement will be monitored by the OSHA Regional Offices and reported in the Regional Annual Consultation Evaluation Report (RACER) for each Consultation Project within their jurisdiction.

Finally, we intend to issue a memorandum to all OSHA Regional Administrators reinforcing the need for proper monitoring of On-site Consultation Projects in their States for the correction of serious hazards and enforcement referrals for failure to correct hazards in a timely manner. The OSHA Consultation Project Managers will be issued a similar memorandum, reiterating the importance of following the proper procedures for the correction of serious hazards.

In the long history of OSHA's On-site Consultation Program, well over 400,000 consultation visits have been conducted and over 1 million hazards have been identified and abated through the program. That is an impressive record for this program, OSHA, its State partners, and participating employers. Though we are troubled by what we think is an inaccurate characterization in the OIG Draft Audit that workers are left at risk while hazards are being abated, we nevertheless appreciate the OIG's review of the OSHA On-site Consultation Program. The discovery that some

requirements for written documentation have not been faithfully followed by the three Consultation Projects reviewed in the Draft Audit and the resulting OIG recommendations will be used by OSHA to improve the On-Site Consultation Program.